

COURT-I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**IA NO. 433 OF 2019
IN DFR NO. 4984 OF 2018**

Dated: 7th August, 2019

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

In the matter of:

**Greenko Budhil Hydro Power Pvt. Ltd. ... Appellant(s)
Versus
Central Electricity Regulatory Commission & Ors. ... Respondent(s)**

Counsel for the Appellant(s) : Mr. Buddy A. Ranganadhan
Mr. Tushar Srivastava
Mr. Hemant Singh

Counsel for the Respondent(s) : Ms. Suparna Srivastava
Ms. Sanjana Dua for R-2

Mr. Ravi Kishore
Mr. Rajshree Chaudhary for R-3

ORDER

(PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON)

1. This Application came to be filed seeking condonation of delay of 155 days in filing the appeal against the impugned Order dated 31.05.2018 passed in Petition No. 190/MP/2016 on the file of Central Electricity

Regulatory Commission (for short “**CERC/Commission**”). According to the Applicant/Appellant the impugned order came to be passed on 31.05.2018 wherein the controversy was pertaining to contractual duties in terms of Bulk Power Transmission Agreement (**BPTA**) dated 18.10.2007 and the arrangement arrived at between the stakeholders. According to the Applicant/Appellant, the Appellant thought that the impugned order would also cover the issue of supply of free power (12% / 18%) to the State of Himachal Pradesh. On receiving a letter on 02.08.2018 from the 2nd Respondent asking the Applicant/Appellant to pay Rs.6.41 Crores towards transmission charges qua 8.4 MW, on 13.08.2018, the Applicant wrote a letter to 2nd Respondent stating that the Applicant is not liable to pay such transmission charges in terms of BPTA. Ignoring the said response, again other letter was addressed by 2nd Respondent on 14.08.2018 threatening the Applicant to pay the above said transmission charges otherwise they would take recourse to curtailment of short term open access with effect from 23.08.2018. This was followed by another letter dated 21.08.2018. Meanwhile, the Applicant approached the High Court of Himachal Pradesh in Writ Petition CWP No. 1989 of 2018 complaining arbitrary action of the 2nd Respondent. The High Court granted stay of the operation of the letter

and directed status quo to be maintained as on 20.08.2018 prior to issuance of third letter dated 21.08.2018.

2. A petition No. 265/MP/2018 came to be filed seeking quashing of the above letter issued by 2nd Respondent. Thereafter, on 15.11.2018, the Applicant/Appellant decided to file an appeal before this Tribunal against the impugned order dated 31.05.2018. From 15.11.2018 to till 26.02.2019 the time lapse to file the appeal was due to discussion at various levels such as securing of documents, approval of the draft etc. The detailed dates are submitted.

3. A better affidavit came to be filed on 22.05.2019 wherein the Applicant/Appellant contends that from October 2018 till the date of filing the appeal on 17.12.2018 with defects, the delay was on account of taking legal opinion from counsel after holding the discussion followed by approval of the draft of the appeal to be filed. This caused the delay.

4. According to the Applicant/Appellant, the misreading of the impugned order by the Appellant was the main cause for taking a decision to file the appeal. They also contend that a cross-appeal came to be filed by 3rd Respondent – PTC India Limited against the very same impugned order for adjudication, therefore, no prejudice would be caused to the Respondent, if delay is condoned.

5. 2nd and 3rd Respondents have seriously opposed condonation of delay in filing the appeal. According to 2nd Respondent, the grievance of the Applicant/Appellant against the impugned order pertains to rejection of the Applicant to claim compensation from 2nd Respondent qua the transmission charges alleged to have been wrongly collected by 2nd Respondent between May 2012 to February 2016 and the long term access granted to 2nd Respondent for the transmission of power from Applicant to Budhil Hydro Power Project in the state of Himachal Pradesh. According to 2nd Respondent, the contention of the Applicant absolving the 2nd Respondent of its failure in performing statutory duties is wrong. Both 2nd and 3rd Respondents further contend that the explanation or satisfactory reasoning for the alleged delay has not been properly explained by the Applicant/Appellant, therefore, the application deserves to be dismissed.

6. According to the Respondents, the impugned order was uploaded on website on 01.06.2018. The appeal came to be filed on 17.12.2018 in the Registry. The delay between 02.06.2018 to 16.12.2018 would be 225 days, after deducting 45 days of statutory/prescribed period for filing an appeal. But the Applicant has wrongly stated the delay as 155 days. This amounts to misrepresentation.

7. They further contend that the delay application came to be filed only on 07.03.2019 after three month from the date of filing the appeal, which cannot be accepted. According to 2nd Respondent the reasons mentioned for the delay in filing the application and the grounds are inadmissible and cannot constitute sufficient cause for condonation of delay. The allegation of misconception of the impugned order thinking that it would cover the issue of supply of free power till it received letters from 2nd Respondent is misconstrued. As a matter of fact, the Appellant had filed Petition No. 190/MP/16 seeking the following reliefs:

“(i) a direction to the Appellant to surrender its long-term access rights for evacuation of power from the Budhil Hydro-electric Power Project situated in the State of Himachal Pradesh to the State of Haryana;

(ii) a direction to Respondent No.2 to permit change of drawee for power evacuation from the generation project, either under a fresh application for grant of long-term access or otherwise, without any demand for payment of transmission charges under the then existing contractual arrangements; and

(iii) a declaration that Respondent No.3 had no liability to pay any amounts to Respondent No.2 at all material times under the then existing contractual arrangements, together with consequential reliefs.”

8. Therefore, the issue of supply of free power to Himachal Pradesh utilities was never the subject matter before the Commission. During the pendency of the Petition also separate transmission charges bills were raised on the Applicant/Appellant considering that the two supplies were distinct and separate. The answering respondent proceeded for action in terms of the minutes of the meeting dated 25.04.2012 in terms of concerned regulations applicable. Therefore, the Applicant/Appellant cannot raise the ground that it misinterpreted the order thinking that impugned order covers the issue of supply of free power to the state of Himachal Pradesh. The present appeal is limited to the extent that the Commission rejected the prayer of the Applicant/Appellant that the transmission charges pertaining to contracted power of 61.6 MW with 3rd Respondent collected by 2nd Respondent from the Appellant for certain period was not liable to be paid by it. The filing of writ petition is inconsequential; therefore the grounds raised do not amount to sufficient cause leading to delay in filing the appeal. With these, they sought for dismissal of the application and consequently the appeal as well.

9. 3rd Respondent, more or less raised the same grounds denying the so called sufficient cause as alleged by the Applicant has not been made out.

10. The point that raises this Tribunal's consideration is:

“ Whether condonation of delay application deserves to be allowed or not?”

11. It is not in dispute that the cross-appeal is already filed against very same impugned order by 3rd Respondent - PTC India Limited. The said appeal was also filed with some delay and the same came to be allowed.

12. The present Applicant is the 3rd Respondent in cross Appeal No. 261 of 2018 filed by PTC India Limited. If more than one appeal is filed against the same impugned order in the normal course of events, both are heard together. By the impugned order, it seems both the Applicant/Appellant and the 3rd Respondent were aggrieved. Whether the delay is 155 days or 255 days, the fact remains that the appeal is filed with considerable delay. Even if the Application is allowed, ultimately, it would not decide the merits of the appeal. The Respondents in this application will get an opportunity of hearing on merits of the appeal. In other words, the appeal will be heard on merits and decided accordingly. When the Appeal of the 3rd Respondent in Appeal No.261 of 2018 is still pending, we are of the opinion that it would be just and proper to allow the delay condonation application in the interest of justice. Accordingly, the Application is allowed.

13. For the inconvenience caused to the Respondents, cost of Rs.25,000/- (Rupees Twenty Five Thousand only) is imposed. Ordered accordingly.

Registry is directed to number the appeal and list the matter for admission on **21.08.2019**.

S.D. Dubey
[Technical Member]

Justice Manjula Chellur
[Chairperson]

Dated: 7th August 2019

REPORTABLE/~~NON-REPORTABLE~~

ts/tpd